

MAY 20 2024

FORM FOR USE IN APPLICATIONS

FOR MOTIONS UNDER 28 U.S.C. § 2255

NATHAN OCHSNER  
CLERK OF COURT

11.23 CR-196-1

Jose Francisco Olvera-Rodriguez **B24-69**  
Name

5650 73 79  
Prison Number

FCI Victorville 1 (Med)

Place of Confinement

United States District Court Brownsville District of Southern Texa

Case No. 23-40431  
(To be supplied by Clerk of U.S. District Court)

United States,

v.

Jose Francisco Olvera-Rodriguez  
(Full name of movant)

(If movant has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

MOTION

1. Name and location of court which entered the judgment of conviction under attack Federal Building and United States Court house, 600 East Harrison St. Brownsville, Tx
2. Date of judgment of conviction 7-18-2023
3. Length of sentence 120 Months Sentencing Judge Rodriguez
4. Nature of offense or offenses for which you were convicted:  
RE-ENTRY (crossing border illegally)
5. What was your plea? (check one)  
(a) Not guilty ( )  
(b) Guilty (☒)  
(c) Nolo contendere ( )  
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:  
A guilty plea to re-entry.
6. Kind of trial: (check one)  
(a) Jury ( )  
(b) Judge only (☒)
7. Did you testify at the trial? Yes ( ) No (☒)
8. Did you appeal from the judgment of conviction?  
Yes (☒) No ( )
9. If you did appeal, answer the following:  
(a) Name of court United States District Court, Southern District Tex  
(b) Result Denied  
(c) Date of result January 4, 2024
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court? Yes ( ) No (☒)

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court N/A  
 (2) Nature of proceeding N/A  
 (3) Grounds raised N/A

- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes ( ) No ( )  
 (5) Result N/A  
 (6) Date of result N/A

(b) As to any second petition, application or motion, give the same information:

- (1) Name of court N/A  
 (2) Nature of proceeding N/A  
 (3) Grounds raised N/A

- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes ( ) No ( )  
 (5) Result N/A  
 (6) Date of result N/A

(c) As to any third petition, application or motion, give the same information:

- (1) Name of court N/A  
 (2) Nature of proceeding N/A  
 (3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ( ) No ( )

(5) Result N/A

(6) Date of result N/A

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes (✓) No ( )

(2) Second petition, etc. Yes ( ) No (✓)

(3) Third petition, etc. Yes ( ) No (✓)

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: I appeal my sentence because I believe that it was unjustified that I was sentence not only for the crime that I committed (re-entry) but also for previous crimes that I was enhance points that led to long term of imprisonment.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

NOTE: If Movant asserts denial of effective assistance of counsel (ground "i"), he must describe with particularity the factual basis for his claim (e.g., lawyer failed to raise insanity defense), and he must describe the prejudice allegedly suffered as a result of the denial of effective assistance of counsel (e.g., convicted of crime that Movant lacked the mental capacity to commit).

A. Ground One: I

Supporting FACTS (tell your story briefly without citing cases or law):

My counsel lack to represent me at my best  
behave. I was sentence without given a "Plea  
Deal". My counsel did not represent me at my  
best interest. My crime offense level was at  
8 points, I was given a total of an additional  
22 points after acceptance of responsibility  
my offense level end it up at 27 points  
category 6. During my hearing my counsel  
rushed me, did not explain PSI thoroughly.  
Every time I would ask him something  
his response was that there was nothing  
else he could do on my behave and to  
just accept my sentencing.

B. Ground Two: N/A

Supporting FACTS (tell your story briefly without citing cases or law):

N/A

C. Ground Three: N/A

Supporting FACTS (tell your story briefly without citing cases or law):

N/A

D. Ground Four: N/A

Supporting FACTS (tell your story briefly without citing cases or law):

N/A

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:
- me. NO other grounds were effective towards
14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?  
Yes ( ) No ( ☒ )
15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
- (a) At preliminary hearing Hector F. Garza  
600 East Harrison St. #115B Brownsville TX 78520
- (b) At arraignment and plea Hector F. Garza
- (c) At trial N/A
- (d) At sentencing Hector F. Garza
- (e) On appeal Hector F. Garza, Michael Lance Herman  
Marjorie A. Meyers, Carmen Castillo Mitchell, Nathan Ochsner
- (f) In any post-conviction proceeding N/A
- (g) On appeal from any adverse ruling in a post-conviction proceeding N/A
16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ( ) No ( ☒ )
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?  
Yes ( ) No ( ☒ )
- (a) If so, give name and location of court which imposed sentence to be served in the future: N/A
- (b) And give date and length of sentence to be served in future: N/A
- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?  
Yes ( ) No ( ☒ )

Wherefore, movant prays that the court grant him all relief to which he may be entitled in this proceeding.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 22<sup>nd</sup> of April 2024  
(Date)

*Joe F. O'Mara Rodriguez*  
Signature of Movant



MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY  
A PERSON IN FEDERAL CUSTODY

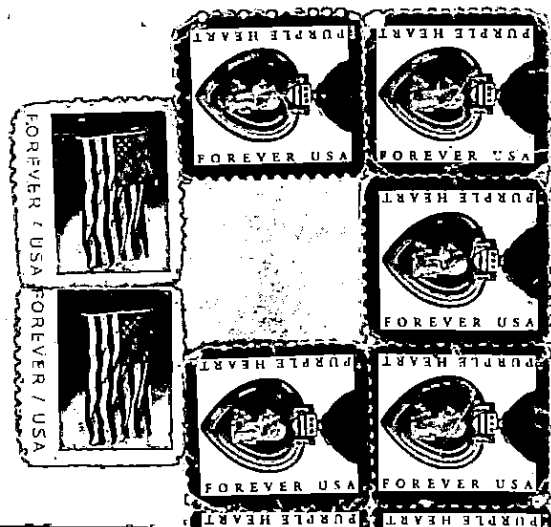
INSTRUCTIONS--READ CAREFULLY

- (1) This motion must be legibly handwritten or typewritten, signed by the movant and subscribed to under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt, your petition will be filed if it is in proper order. No fee is required with this motion.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to pay the costs. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each judgment.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.
- (7) When the motion is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court, whose address in the Waco Division is P.O. Box 608, Waco, Texas 76703-0608.
- (8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

Rose Francisco Olvera Rodriguez  
10. 56507-379  
C1 Victorville 1 MED  
Box 3725  
delanto. CA 92301

LEGAL  
MAIL

United State Courthouse  
Brownsville Division  
600 E. Harrison Street #102  
Brownsville, Texas 78520



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CITY OF BROWNSVILLE